

REMARKS

In the Office Action mailed by the United States Patent and Trademark Office on November 28, 2007, claims 1-7, 9, 11-16, 18-21, 23, 25 and 27-29 were rejected under 35 U.S.C. § 102(e) as being anticipated under Sash (US 2005/0075925).

Claim Rejections Under 35 U.S.C. § 102 and § 103:

M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. "To anticipate a claim, the reference must teach every element of the claim." M.P.E.P. § 2131 states further,

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . . "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Further, M.P.E.P. § 2141 sets forth the *Graham* factual enquiries that should be considered when making an obviousness rejection under Section 103: "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." (Citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).) Additionally, one helpful standard for a Section 103 rejection is set forth in M.P.E.P. 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Applicants respectfully submit that Sash fails to teach every element of the claim set as provided herein for the following reasons.

Independent claim 1 of the present invention recites a method of unilevel marketing and distribution, the method comprising the steps of: preparing promotional materials for mass

distribution; using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is known by said potential customer and received by a seller, wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative; personalizing the promotional materials for distribution to said potential customer, wherein personalizing the promotional materials comprises the step of modifying promotional materials to include said personalized message and means for identifying said sales representative; distributing said promotional materials directly to said potential customers from a distributor; if the potential customer purchases from said promotional materials, using a computer to: receive a purchase order from said potential customer, wherein said order is received by said distributor and identifies said sales representative; receive payment for said order; and distribute a portion of said received payment as a commission to said sales representative.

Sash fails to teach or fairly suggest personalizing promotional materials for mass distribution, distributing the personalized materials directly from the distributor (not the sales representative), receiving payment for said order and the distribution of a portion of said received payment as a commission to said sales representative. Rather, Sash discloses an internet-based address book that enables individual sales representatives to send a personalized message to potential customers.

In particular Figure 27c and paragraphs 129-131 of Sash disclose only that a sales representative may prepare a personalized message to be sent to a potential customer, but fails to disclose the preparation and personalization of promotional materials of mass distribution. Accordingly, Sash fails to teach or fairly suggest the concept of preparing promotional materials for mass distribution and personalizing the promotional materials, wherein personalizing said promotional materials comprises the steps of modifying promotional materials to include a personalized message and means for identifying said sales representative. Additionally, Sash fails to disclose distributing the personalized promotional materials directly to potential customers from the distributor. Rather Sash indicates that the sales representative prepares and sends promotional material to a potential customer on behalf of a distributor.

Further, Figure 28b of Sash indicates that a report is generated indicating whether or not a potential customer has purchased, but does not indicate that the system is capable of receiving payment for said order. Likewise, paragraph 129 indicates that feedback may be provided to the sales representative, but does not disclose that the system is capable of receiving payment. Accordingly, Sash fails to teach or fairly suggest the concept of receiving payment for said order. Accordingly, Sash fails to teach or fairly suggest all the claim limitations of the present invention.

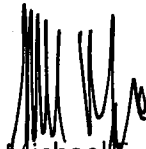
Finally, Figure 27a of Sash discloses only, in a bulletin format, that a particular customer has made a purchase, for how much, and additionally provides sales representatives with information as to how often this particular customer has been contacted. Likewise, paragraphs 129-131 fail to disclose the concept of distributing a portion of said received payment as a commission to a sales representative. Accordingly, Sash fails to teach or fairly suggest each of the claim limitations of the present invention. As such, Sash fails to anticipate or render obvious the claims of the present invention and Applicant respectfully requests that the rejections under § 102 and § 103 be withdrawn at this time.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this 26th day of February, 2008.

Respectfully submitted,



Michael F. Krieger
Attorney for Applicant
Registration No. 35,232

KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 321-4814
Facsimile: (801) 321-4893

JRM/brc
1019404